

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue, Hearing Room A
Olympia, Washington
May 11, 2006
9:00 AM**

Final Amended Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Gerald "Butch" Reifert	Design Industry	Appointment Pending	House of Representatives (R)
Rocky Sharp	Specialty Contractor	Wendy Keller	Public Hospital Project Rvw Bd
Ed Kommers	Specialty Contractor	John Lynch (Chair)	General Administration
Carolyn Crowson	OMWBE	Appointment Pending	Cities/Counties/Ports
Terry Tilton	Construction Trades Labor	Sen. Phil Rockefeller	Senate (D)
Rodney Eng	Cities/Counties/Ports		
Ray Rawe	Cities/Counties/Ports		
Larry Byers	Insurance/Surety Industry		
Daniel Absher	General Contractor		
Olivia Yang	Higher Education		
Dan Vaught	School District Project Rvw Bd		
Rep. Kathy Haigh (Vice Chair)	House of Representatives (D)		
Sen. Dave Schmidt	Senate (R)		

STAFF & GUESTS

Nancy Deakins, GA	Marsha Reilly OPR
Searetha Kelly, GA	Dick Lutz, Centennial Construction
Valerie Gow, Puget Sound Meeting Services	Jerry Schlatter, Washington State University
Julie Sexton, WSAC	Darlene Septelka, King County
Dick Goldsmith, AWPFD	Ginger Eagle, WPPA
Larry Stevens, MCA/NECA	Kathryn Leathers, OPR
Stan Bowman, AIA/WA	Nora Huey, King County
Tom Balbo, AGC	Duke Schaub, AGC
Ashley Probart, Association of Washington Cities	Tom Henderson, SBCTC
Diane Smith, Senate	

Welcome & Introductions – Chair's Comments

Vice Chair Kathy Haigh called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:10 a.m.

A meeting quorum was attained. Ray Rawe, substituting for Michael Mequet, and Terry Tilton, substituting for Dave Johnson, provided self-introductions. Boardmembers and staff provided self-introductions.

Vice Chair Haigh introduced staff members Katherine Leathers and Marsha Reilly, who will assist the Board in drafting legislation.

Vice Chair Haigh reviewed the meeting agenda.

Approve Agenda

It was noted the agenda should be corrected to reflect the approval of the April 13, 2006 minutes and not the March 9, 2006 meeting minutes.

Larry Byers moved, second by Rodney Eng, to approve the amended agenda. Motion carried.

Approval of April 13, 2006 Minutes

Carolyn Crowson moved, seconded by Rocky Sharp, to approve the minutes of April 13, 2006 as presented. Motion carried.

Legislative Session Task Force

Vice Chair Haigh reported Chair Lynch sent a letter to the legislative representatives on the Board about establishing a Legislative Session Task Force. A meeting date has not been established because of scheduling conflicts. Members plan to meet in June. Two other members on the committee include Office of Financial Management (OFM) Policy Analyst Tony Ginatta and Chair John Lynch.

Public Comments

Jerry Schlatter, Washington State University (WSU), said he is representing Capital Planning and Development for WSU. He advocated for extending the sunset for the General Contractor/Construction Manager (GC/CM) contracting process. The public is well served by the GC/CM process. Also of interest is the issue about an oversight committee formed to pass on decisions for agencies to proceed with the GC/CM process. He indicated personnel at the University have a great deal of experience and success in working within the GC/CM contracting procedure and regents are appointed to oversee capital projects. WSU does not see an advantage of adding another layer of review in the decision-making process for GC/CM.

Vice Chair Haigh reported the subcommittees are working diligently on the issue to ensure the public gains the most benefit for their tax dollar while also ensuring a cohesive and smooth approval process.

Ed Kommers indicated the subcommittee is working on several ideas and that the process is contemplated to be a trade-off of the public requirements of the GC/CM process in lieu of a review board.

Mr. Schlatter commented on the difficulties associated with traveling from the eastside to the westside of the state for a review board process as well as the redundancy associated with the process.

Vice Chair Haigh thanked Mr. Schlatter for his comments.

Olivia Yang arrived at the meeting at 9:17 a.m.

Reports from Subcommittees

Data Collection – Darlene Septelka

Ms. Septelka reported the subcommittee is nearly complete on its original task. She briefed the Board on the subcommittee's recommendations.

The Data Collection Subcommittee recommends collecting data on projects over \$5 million. Data should be collected twice, once at the start of the project and upon completion of the project.

Ms. Septelka referred members to the proposed survey form containing the recommended benchmarks of:

- **Schedule Performance** – schedule growth, construction schedule growth, delivery speed, and construction speed.
- **Cost Performance** – unit cost, construction contract unit cost, cost growth, construction contract cost growth, intensity of delivery.
- **Contract Changes** – change order ratio and change order ratio by change category.
- **Contractor Selection Process** – rate of success, contractor competition intensity, competition diversity by firm size, and contractor selection process protest that impacted schedule.
- **Subcontractor Diversity** – diversity participation and outreach.
- **Certified/Formal Claims** – project formal claims, claim percentage, and level of settlement.
- **Value Performance** – established project performance standards, evaluate quality performance, and project meet owner's expectation.

The survey is a web-based process.

Ms. Nancy Deakins described the costs associated with establishing the web-based system. No costs were obtained for maintenance or data analysis. Setting up the web-based survey will cost approximately \$3,000.

Ms. Septelka said she met with the analyst about the expectations for the drop down menus and expectations associated with the survey.

Ms. Septelka reviewed the project data elements for collection beginning with the project start data. If the proposed review board is approved, the subcommittee will likely recommend that when the project is presented to the board, data collection should begin at that point.

Most of the data will be collected at the completion of the project. Ms. Septelka reviewed the data survey elements for project finish data. Several pull down menus are included in the various categories. She reviewed the major categories for inputting data at the conclusion of the project:

- **Project**
- **Schedule**
- **Cost**
- **Changes and Claims**
- **Prime Contractor Selection Process**
- **Supplier Diversity Participation**
- **Quality**
- **Additional Comments**

Mr. Daniel Absher asked if it is possible to have multiple answers. He cited the circumstance of a project delay where there is typically more than one cause. Ms. Septelka said the field could include the option of multiple answers.

The survey will only be completed by the owner.

Mr. Rodney Eng questioned the recommendation for including projects costing \$5 million and above. He asked if there is an estimate on the number of affected projects. Ms. Septelka said \$5 million is a lower amount to afford more data. However, the subcommittee believes that if the project threshold cost was established at \$10 million, collection of the data is limited for Design-Bid Build (DBB) projects because of the project cost threshold. Mr. Eng commented that lowering the threshold to \$5 million will include many highway projects. Ms. Septelka said the survey does not pertain to highway projects because Chapter 39.10 RCW (Revised Code of Washington) does not apply to highways. The subcommittee considered only those projects that fall under the scope of the legislation.

Mr. Eng acknowledged the subcommittee's substantial effort but noted the work is not complete because more detail is needed in providing direction for how the survey should be completed. Some of the fields are not clear. Individuals responsible for completing the survey need to understand the purpose and why the data is needed. Ms. Septelka acknowledged the subcommittee will need to define the data fields so that the person completing the survey understands the purpose for the data.

Vice Chair Haigh commented on the project cost threshold of \$5 million and asked if it is possible to ascertain how many projects could be involved. Ms. Septelka said she personally believes \$10 million should be the project cost threshold. However, the subcommittee preferred establishing a project cost threshold of \$5 million to acquire more data.

Mr. Ray Rawe referred to the building type classification and indicated the project categories do not include rail projects. Ms. Terry Tilton asked about the classification of occupational skills centers and whether they are classified as high school projects. Ms. Septelka said if the project is a K-12 school, it is classified under high school. However, if it is a separate project outside the K-12 school system, skill center could be added as a category. Mr. Absher suggested adding another category under schools as some school districts have other projects other than schools. Ms. Olivia Yang asked whether the building classifications included in the survey are consistent with OFM's building classifications. Ms. Septelka said the subcommittee originally considered OFM's classifications but wanted to simplify the categories. OFM representatives offered recommendations during the development of the data fields.

Ms. Yang requested clarification about the types of projects that meet the cost threshold of either \$5 million or \$10 million. Ms. Septelka said the cost threshold is difficult to determine as it could pertain to project budget size, construction size, or project value. The subcommittee considered the threshold to be the total project budget.

Mr. Larry Byers referred to the pull down responses for "size of firm selected by annual revenue" and recommended additional categories within the "under 100 million" category because there is a huge difference between a \$20 million contractor versus a \$90 million contractor. He recommended adding another category of "under \$50 million."

Mr. Dan Vaught noted the Office of Superintendent of Public Instruction (OSPI) tracks projects that receive state and federal funds. A database is already established to track project sizes, which could be another source that can be tapped for data collection. Most schools complete capital facility plans for local projects, which could also be a data source for project size.

Mr. Eng inquired about the entity responsible for completing the survey. Ms. Septelka said the survey is completed either by the project owner or project manager. Mr. Eng asked if it pertains to any public project that does not have authority for a GC/CM project. Ms. Septelka said the Board will need to make a decision concerning that issue. For example, will the survey only pertain to projects that Chapter 39.10 RCW allows or is it for all owners? The issue as to what level should be determined by the Board. Mr. Eng said it is likely it will pertain to the final determination of the project cost threshold. He noted there are many public owners

who have no authority to pursue a GC/CM process. There are concerns about the amount of data that might be obtained for other alternative public works projects.

Mr. Eng questioned whether an owner has the resources to determine the size of the contractor. Ms. Septelka said the information should be available as part of the contractor selection process. Mr. Eng disagreed and said owners often check to see if the contractor is bonded and have the experience. He indicated he does not consider the contractor's business size. Ms. Septelka said within the GC/CM process, the information is attainable as it is part of the process. Mr. Eng said his goal is to ensure data collection is valuable without becoming a huge burden on the owner. Ms. Septelka cited one of the issues surrounding the legislation is that it is perceived that only GC/CM projects are completed by the larger contractors rather than all contractors. She indicated when she surveyed for the Joint Legislative Audit and Review Committee (JLARC) Study; she researched each firm through the library and other public sources of information to determine the firm's size. It was an extremely difficult process, which is why the data field is included in the survey. Mr. Eng said he wants to avoid the issue of the bid documents requiring the information because of a potential bid challenge situation for non-responses.

Vice Chair Haigh asked Larry Byers, as the representative from the insurance and surety industry, whether there are business size categories for insuring companies. Mr. Byers replied the industry does not categorize businesses by size but underwrites companies individually. Typically, the underwriting of surety bonds are based on a number of metrics, including net worth as opposed to sales. Generally, larger firms typically release the information as opposed to smaller firms where it is more difficult to obtain the information. Mr. Absher agreed that the smaller firms are much more reluctant to provide the information.

Mr. Duke Schaub, Associated General Contractors, said the comments about the reluctance of smaller firms providing the information are accurate. Smaller firms that have less than \$4 or \$5 million in sales volume annually likely will not provide the information, which makes it difficult to obtain. Information on the 50 largest construction firms in the state is generally readily accessible.

Vice Chair Haigh pointed out that there is some accountability and responsibility of the contractor to provide the information if they are constructing a public project funded by public dollars.

Mr. Absher cited the reality of some private contractors who do not have trust for government that believe they shouldn't share the information. Not all contractors believe they have a duty to share information. He suggested that some information is better than no information and recommended including a category where the size of the firm cannot be determined.

Ms. Crowson said subcommittee members discussed including an "other" category in all pull down menus. She noted the issue could be addressed by analyzing the different data fields once the data is collected. The Legislature will want to know what the best delivery method is and if the project cost threshold is not lowered below \$10 million there will be insufficient data for a comparison to address the issue.

Ms. Septelka suggested the Board should consider the purpose and intent of the survey and how the information will be utilized.

Mr. Schlatter commented on the difficulty of owners cooperating in completing the survey if the project cost threshold for projects is established below \$10 million. He said he supports a threshold of \$10 million and above.

Mr. Eng noted in the bidding environment, owners are receiving public disclosure requests for other contractor bids because of the competitive nature of the industry.

Mr. Schlatter suggested a data field of “dollar volume annually” to resolve the issue rather than business sales volume. Ms. Septelka said the reason for the data is to determine whether the contractor is small, medium, or large company to help address the assertion that only large contractors are benefiting from GC/CM.

Senator Dave Schmidt arrived at 10:05 a.m.

Vice Chair Haigh suggested reducing the font size of the survey to enable some space for comments from the Board for each of the data fields. Ms. Septelka confirmed the request and said the survey will be sent electronically to the Board.

Ms. Septelka offered an additional option of a smaller team survey after completion of the project by the project contractor, owner, architect, project engineer, and subcontractors to capture more than just the owner’s perspective. She asked the Board whether there is a need for a project team survey.

Mr. Rawe suggested having an owner fill out a sample survey to ascertain any difficulties in completing the survey.

Mr. Eng referred to the team survey and said it would be a valuable component.

Mr. Absher cautioned that the contracting environment is busy and many contractors are looking at reasons for not bidding on public works. Adding more requirements, such as the survey, is just one more reason to only bid for private sector projects. He said he has concerns about completion of the survey by subcontractors and smaller contractors, which could result in an invalid sampling. The data is desired, but there must also be a realistic expectation about the probability of collecting good data. Ms. Septelka shared her experience in previous surveys. The recommendation for the team survey is to respond to many contractors that have indicated there is little effort to seek their input about a project. Ms. Tilton suggested another alternative of making the survey optional. Ms. Septelka acknowledged the comment but noted that only those who had problems with the project would likely be the only ones completing the survey if it was optional.

Ms. Septelka asked for direction from the Board about continuing work on the team survey as well as direction on the main survey.

Ms. Deakins said from a timing perspective, there is a need for some pilot survey data by fall to be prepared for the 2007 legislative session. There is discussion about using the school’s projects as pilot data. The Board should finalize the survey by June.

Discussion followed about the Board’s direction.

Mr. Absher recommended the subcommittee provide a recommendation on what information should be included on the survey.

Vice Chair Haigh recommended members individually provide input to the subcommittee about their evaluation of the survey and whether a subjective team survey process should be developed. She clarified that the subcommittee should provide the Board with a specific format of what a subjective assessment might entail and how much time it takes to complete as well as the questions.

Discussion followed about the Board’s preference for the project cost threshold for completion of the survey.

Daniel Absher moved, seconded by Rocky Sharp, to require completion of the survey at the threshold level established for alternative procurement contracting methods. Motion carried.

Carolyn Crowson moved, seconded by Daniel Absher, to approve the budget of \$3,000 for developing the web-based survey. Motion carried.

The meeting recessed for a break from 10:23 a.m. to 10:45 a.m.

Reauthorization Subcommittee – Rodney Eng

Mr. Eng reported the subcommittee continues to move forward and is offering some additional recommendations. As the subcommittee moves forward and in more detail, new issues have been raised. There have been productive discussions by the three task forces. He referred the Board to the CPARB Issues Tracking log that details the issues each task force is working on.

The Owner Task Force (#1) agreed on several recommendations. The subcommittee accepted some of the recommendations for presentation to the Board. One recommendation includes:

- Creation of a central board to approve eligible projects and owners for GC/CM and Design Build (DB). The board would not approve Job Order Contracting (JOC) projects.

The MACC Task Force (#2) offered a previous recommendation to the Board for the timing of the MACC to be set at 90%. Recent discussions related to the MACC concern the savings incentive. A savings incentive is a process where the parties negotiate a MACC and if there is remaining funds at the end of a project, many owners have offered an incentive to the contractor that is authorized by statute. The owner and contractor can split the savings to a specific amount. The recommendation of the task force that was accepted by the subcommittee is to prohibit those savings incentives. The subcommittee believes the savings incentive results in the perception that the GC/CM is not motivated to bring forward the claims and concerns of the subcontractors. Another aspect is that the majority of the owners no longer use the savings incentive and that the GC/CM's have stated the savings incentive does not really impact the way they conduct business.

The Contractor Task Force (#3) is discussing several issues and is close to a recommendation regarding the claims process. The contract would include a timeline for the claims process. The timeline is recommended as a default timeline whereas if the owner does not respond to a claim within a specific period of time, the claim would be deemed "denied." The contractor could then move the claim to the next step in the process. The issue concerns owners who take too long in responding to claims resulting in a subcontractor not paid for completion of a job because the claim is unresolved.

Mr. Kommers reported the task force categorized the task force items into three categories:

- Accepted
- Accepted, needs work
- Needs further discussion.

For each pending item, a member of the task force is working on revised language that will require another meeting for review. For items needing further discussion, Mr. Kommers said he has prioritized the list of items that needs further discussion and will transmit the information to Mr. Eng. Each item involves different subgroup members, grouped so that the appropriate stakeholders attend the meetings.

Vice Chair Haigh asked that the subcommittee to forward information to her staff regarding proposed legislation. Mr. Eng said he prefers each task force assess whether it's ready for drafting legislation.

Mr. Vaught asked whether the subcommittee has discussed criteria for applying for a GC/CM project. Mr. Eng said the task force has developed a preliminary draft of the review board composition. The task force has also discussed the criteria but there appears to be some overlap between the Reauthorization and Expansion Subcommittees.

Mr. Eng addressed questions from Ms. Deakins about Change Order Administration: response time and percentage markups. In general, there is concern that when there is a change order for work there can be a significant delay in when the change order is executed. The owners were unanimous that if that period is an undue length of time, the contractor should not have to suffer and basically finance the work for the owner when the change order is merely a formalization of an oral or written agreement for payment of specific work to be done. Once agreement is attained the clock, in essence, begins to tick. If the agreement is not formalized within a specific timeframe, the owner will begin to pay interest on the agreed work.

Ms. Deakins offered the suggestion of including the list of issues under review by Task Force #3 on the tracking log to assist the Board in tracking progress. Mr. Kommers said he will provide a summary of items that have been accepted but needs work as well as other issues. The task force and subcommittee will be meeting prior to the Board's June meeting, which should result in some progress on some of the outstanding issues.

Expansion Subcommittee – Oliva Yang

Ms. Yang reported the subcommittee has spent the last five months working on the description of ideal project criteria for GC/CM as well as for the owner of a GC/CM project. A list was developed for both owners and projects. The subcommittee approached the work by looking at those attributes contributing to success for either the owner or the project. Current legislation speaks to owner size as well as project attributes, such as project scheduling. Subsequently, the subcommittee identified project and owner criteria. Another aspect of the discussion is whether the criteria will be used instead of the legislation or whether the criteria will be in addition to the legislation. It was acknowledged that there would be considerable anxiety by contractors/subcontractors that only using the criteria could open the door. Members spent the last meeting discussing ways to calibrate it to control the number of eligible projects.

The committee developed a recommendation consisting of a matrix of project criteria. It is characterized to designate that if the owner is currently authorized for GC/CM and there is a project of \$10 million or over, the owner needs to inform the review board. It was recognized that informing the board needs to a short process. Under an earlier recommendation from an owner, existing owners could seek a recommendation from the review board. However, she said because her employer is a public institution that is fairly sensitive to feedback, it is highly unlikely for the University to go before a central project review board with the result of the board recommending against the project, which the University would likely ignore and proceed forward regardless of the review board's recommendation. This is an area of concern that needs more work. If an owner is currently authorized for GC/CM, a process could be developed for informing the review board for projects \$10 million and over, and for projects under \$10 million; review board approval must be attained. For new owners, projects \$10 million and over require approval of the review board. For owners with projects under \$10 million, a more structured process involving a limit of 15 demonstration projects could be allowed with the acknowledgement that public hospitals and schools currently have approval for an allotted number of projects.

The subcommittee agreed there is a second layer of discussion needed for the concepts.

Originally, the subcommittee was to discuss JOC owners. Dick Lutz distributed some information for discussion at the subcommittee's next meeting. Robin Parkins, representing the Design-Build Institute of America, also attended and provided material to the subcommittee for discussion at its next meeting.

Senator Schmidt offered a suggestion for including within the subcommittee's recommendation, a mechanism to include a scaling factor for increasing the project threshold without having to amend legislation to account for inflation.

Vice Chair Haigh inquired about assistance to the subcommittee in drafting legislation. Ms. Yang said the subcommittee is close in its recommendation but needs to attain agreement prior to drafting legislation.

Mr. Eng said based on the discussions of centralizing project issues between the two subcommittees (Reauthorization & Expansion), it appears consensus is near but not yet attained. Ms. Yang said the issues concerns currently authorized owners and the review board process. Mr. Kommers said the review board process could work as described but there are reservations about the project size and putting other protections in place. If they can be resolved, it is likely a recommendation is forthcoming.

Ms. Deakins inquired about the subcommittee's progress in terms of the established timeline. Ms. Yang said legislation is scheduled to be drafted in June for GC/CM. However, she said she does not have a clear timeline on DB and JOC but that the goal is sometime in July.

Summer Recognition Event

Vice Chair Haigh referred to previous discussions about scheduling a summer social event. On Friday, July 28, 2006 at 3:00 p.m. the Department of General Administration's Engineering and Architectural Services is having a picnic at Tumwater Historical Park. She suggested the date as an option for a summer social event for the Board. An informal show of hands revealed that most members are available to attend.

CPARB Strategies – Are We on Track?

Senator Schmidt said he likes the direction the Board is pursuing. He indicated he values the Board and would like the Board to develop a consistent, public policy on public works to ensure a relevant, fair, balanced, and consistent process. He cited the Board's importance for discouraging many interests from competing and pursuing different avenues with the Legislature and how the recommendations from the Board will be viewed by the Legislature as representative of all interests.

Set Next Meeting Agenda

The next meeting is scheduled for June 8, 2006 at the O'Brien Building. The meeting agenda will follow a similar format with possibly some proposed recommendations.

Ms. Deakins shared meeting dates and times for the subcommittees. All meeting information is posted on the website.

Vice Chair Haigh announced the recommended replacement for Gary Ballew representing Cities/Counties/Ports is Nora Huey.

Adjournment

Ed Kommers moved, seconded by Rodney Eng, to adjourn the meeting at 11:30 a.m. Motion carried.

Vice Chair Kathy Haigh, Chair, CPARB

Prepared by Valerie Gow, Recording Secretary
Puget Sound Meeting Services